

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

HB 3492 - SB 3436

March 10, 2012

SUMMARY OF BILL: Amends the Administrative Procedures Act (APA) to require the initial orders entered in an APA contested case hearing to be reviewed by the administrative judges within the Administrative Procedures Division (APD) of the Office of the Secretary of State. Requires funds appropriated for the purpose of conducting appeals under the APA to be transferred to the APD.

ESTIMATED FISCAL IMPACT:

**Increase State Expenditures – \$600/One-Time/DHS
Exceeds \$1,459,900/Recurring**

Increase State Revenues - \$300,000/APD

**Increase Federal Expenditures – \$600/One-time/DHS
\$155,000/Recurring/DHS
\$661,900/TennCare**

Assumptions:

- Under the bill, final order authority would be taken from the agency head and given to APD for cases subject to review.
- According to APD, all initial orders, including those issued by APD judges, would be reviewed by APD if appealed. Therefore, if one judge in APD issues an initial order that is appealed, the review would be presented to another judge in APD.
- The judges of APD hear cases concerning medical appeals for the TennCare program. Those initial orders are appealed to the Commissioner of Finance and Administration (F&A). Hearing officers with the Department of Human Services (DHS) hear TennCare eligibility appeals. Those initial orders are appealed to the Commissioner of DHS. Federal law (42 CFR 431.10 - Single State Agency) requires the agency responsible for administering the Medicaid program to have final review over any administrative decision under their jurisdiction. Having initial orders related to TennCare medical service and eligibility appeals reviewed by APD instead of DHS and F&A may be in conflict with this federal law.
- According to APD, additional staff will be necessary to accommodate the additional number of appeals that would come to APD.

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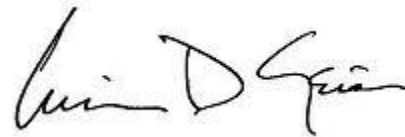
- According to APD, 170 initial orders issued last year by the judges in APD were appealed to the agency. This represents approximately 4.5 percent of the total number of initial orders issued by the APD judges. It is estimated that it would take two hours of a judge's time to perform a file review each initial order appealed. ADP charges \$100 per hour for judge time.
- If APD reviewed the 170 initial orders it issued that were appealed, there would be a total of 340 hours of judge time at \$100 per hour for a total cost to the agencies of \$34,000.
- According to APD, DHS currently issues approximately 29,000 initial orders per year by the use of DHS hearing officers. If these cases have the same rate of appeal, then 4.5 percent or approximately 1,300 initial orders are appealed.
- If these 1,300 new cases come to APD for a file review, approximately \$260,000 (2 hours per case x \$100 x 1,300 cases) in revenue would be generated for APD.
- APD assumes that there would be approximately 30 additional cases that would come to APD for file review for an additional increase in revenue of \$6,000.
- The total revenue generated from current APD case file reviews and the new DHS case file reviews is \$300,000 (\$34,000 + \$260,000 + \$6,000).
- It is estimated that as a result of the bill, a minimum of 1,500 cases (170 + 1,300 + 30) would come to APD for file review. Each case file review would require two hours of judge time or 3,000 hours per year. Two additional judges will be required to handle this increased workload.
- The cost of a judge in APD is \$136,000 for salary and benefits. The total cost of two additional judges will be \$272,000 (\$136,000 x 2).
- The bill states that funds appropriated to agencies for the purpose of conducting these appeals would be transferred to APD. It is unknown whether agencies have special "appeal monies" set aside and if they do, in what amount; therefore, the amount of funds to be transferred to the APD cannot be quantified.
- According to the Department of Human Services and the Bureau of TennCare, federal monies cannot be transferred for this purpose.
- The bill does not state that those monies would be in lieu of APD billing the agency for judge work as is traditionally done. Therefore, it is assumed that APD would continue to bill the agencies on an hourly basis.
- According to the Department of Safety, the department currently uses the APD for its initial orders and pays them by the hour. Last year the department paid the APD \$594,700 for handling the initial cases. It is therefore assumed that the recurring increase in state expenditures to the Department of Safety in FY12-13 will exceed \$594,700.
- This estimate assumes the Department of Safety will incur expenses for APD services on an hourly rate.
- According to the Bureau of TennCare, federal regulation (42 CFR § 431.244(f)) and the federal court's Grier Consent Decree require TennCare to resolve standard enrollee appeals by issuing an initial order within 90 days of the date on which the appeal was filed. Expedited enrollee appeals must be resolved within 31 days. According to TennCare, the bill will ensure that 100% of TennCare expedited appeals will be untimely resolved in the hearing process. If this bill had been in place in CY11, TennCare and its MCCs would have had to cover the benefits-at-issue for 1,500 expedited appeals. This would have meant additional expenditures to cover benefits

which TennCare had already determined to be excluded from coverage or not medically necessary. The exact amount of the increase will depend upon the additional length of each hearing and the specific covered service at issue in the appeal.

- According to the Bureau of TennCare, the increase in expenditures to TennCare is estimated to be an amount exceeding \$1,000,000. Of this amount, the recurring increase in state expenditures for FY12-13 will be \$338,120, and the recurring increase in federal funding will be \$661,880.
- According to the Department of Human Services (DHS), federal case law and federal regulations require DHS to offer administrative hearings to persons who are aggrieved by the denial of services. The Appeals and Hearings Division receives approximately 35,000 appeal requests per year. Of this number, approximately 29,000 go to a hearing.
- According to DHS, the bill reduces the amount of time available to meet mandatory appeal time limits. This will result in increased costs to the state for benefits provided appellants who otherwise may not be eligible to receive benefits. If one percent of the hearings are delayed 30 days beyond the time limit, these appellants could receive two months benefits as a result of extended hearing time limits. The increase in state expenditures is estimated to exceed \$100,000 for these benefits.
- For purposes of this estimate, the APD will review approximately 1,300 new petitions for appeal which will increase DHS costs by approximately \$260,000 (1,300 x 2 hours review x \$100/hr). This cost will be split 50 percent state and 50 percent federal.
- According to DHS, one additional position will be required to transcribe each hearing. The estimated recurring cost of the additional position is approximately \$50,000 (salary and benefits \$44,800, supplies \$200, telephone \$3,600, LAN/WAN connection \$1,400). There is a one-time cost of \$1,200 for a computer. This cost will be split 50 percent state and 50 percent federal.
- The total increase in state expenditures will exceed \$1,459,820 [\$272,000 + \$594,700 + \$338,120 + \$100,000 + \$155,000 (1/2 cost of DHS position and appeals)].

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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